

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

STEPHEN McCOLLUM and SANDRA	§	
McCOLLUM, individually, and	§	
STEPHANIE KINGREY, individually and	§	
as independent administrator of the	§	
ESTATE OF LARRY GENE	§	
McCOLLUM,	§	CIVIL ACTION NO. 4:14-cv-03253
Plaintiffs,	§	
	§	
v.	§	
	§	
BRAD LIVINGSTON, et al.,	§	
Defendants.	§	

**GARY EUBANK’S OBJECTIONS AND RESPONSES TO PLAINTIFFS’ SUBPOENA  
DUCES TECUM ATTACHED AS EXHIBIT A TO THEIR APRIL 14, 2016 NOTICE TO  
TAKE GARY EUBANK’S DEPOSITION**

Gary Eubank (“Eubank”) responds to Plaintiffs’ Subpoena Duces Tecum attached as Exhibit A to the April 14, 2016 Notice to Take Gary Eubank’s Deposition (“Subpoena”) as follows:

**General Objection:** Mr. Eubank objects to the definition of “you” contained in the Subpoena. The definition is overly broad and unduly burdensome to the extent it attempts to require him to produce documents of any staff, individuals, and/or entities working at his direction during the time he has been employed by UTMB.

1. All documents you have reviewed in preparation for your deposition.

RESPONSE: Mr. Eubank objects to the extent this request is overbroad and unduly burdensome in seeking to discover all documents that Mr. Eubank may have reviewed in the course and scope of his job duties that may relate to topics addressed during his deposition. Mr. Eubank further asserts the attorney-client privilege and work product protection to the extent this request seeks the identity of documents or communications that may have been reviewed with counsel in preparation for this deposition.

Subject to and without waiving the foregoing objections, any documents reviewed by Mr. Eubank have either been previously produced, or are attached to this Subpoena and produced herein.

2. Your most recent curriculum vitae.

RESPONSE: Mr. Eubank's current CV is attached.

3. All communications concerning the heat to or from you (including those in which you were cc'd or bcc'd) for the period of May 1, 2011 to January 1, 2012 that have not already been produced.

RESPONSE: Mr. Eubank objects to the extent this request is vague and ambiguous due to the undefined term "heat" and further that the request is overbroad and unduly burdensome in requesting that he review all communications during this time period to determine their potential responsiveness to this request.

Subject to and without waiving the foregoing objections, communications to or from Mr. Eubank have either been previously produced, or are attached to this Subpoena and produced herein.

4. All communications concerning the heat to or from you (including those in which you were cc'd or bcc'd) for the period of January 1, 2012 to January 1, 2013 that have not already been produced.

RESPONSE: Mr. Eubank objects to the extent this request is vague and ambiguous due to the undefined term "heat" and further that the request is overbroad and unduly burdensome in requesting that he review all communications during this time period to determine their potential responsiveness to this request. Mr. Eubank further asserts the attorney-client privilege and work product protection to the extent this request seeks the identity of documents or communications exchanged with counsel as may relate to the heat litigation cases.

Subject to and without waiving the foregoing objections, communications to or from Mr. Eubank have either been previously produced, or are attached to this Subpoena and produced herein.

5. All communications concerning the heat to or from you (including those in which you were cc'd or bcc'd) for the period of January 1, 2013 to the present that have not already been produced.

RESPONSE: Mr. Eubank objects to the extent this request is vague and ambiguous due to the undefined term “heat” and further that the request is overbroad and unduly burdensome in requesting that he review all communications during this time period to determine their potential responsiveness to this request. Mr. Eubank further asserts the attorney-client privilege and work product protection to the extent this request seeks the identity of documents or communications exchanged with counsel as may relate to the heat litigation cases.

Subject to and without waiving the foregoing objections, communications to or from Mr. Eubank have either been previously produced, or are attached to this Subpoena and produced herein.

6. All documents or other materials you have reviewed, consulted, or relied upon in forming your opinions or conducting your work in connection with this case.

RESPONSE: Mr. Eubank and UTMB object to the extent this request implies Mr. Eubank is an expert and will offer expert opinions in this matter, or that he has conducted independent work in connection with this case. Mr. Eubank is not a retained or consulting expert in this case. Mr. Eubank is offered as a fact witness only.

Subject to and without waiving the foregoing objections, *see* Response to Request No. 1 as relates to documents reviewed by Mr. Eubank.

7. All documents evidencing any agreement between you and TDCJ or their attorneys or representatives.

RESPONSE: Mr. Eubank objects to the extent this request is vague and ambiguous due to the undefined terms, “agreements” and “representatives.”

Subject to and without waiving the foregoing objections, none.

8. All notes you have prepared or documents you have created in connection with this case.

RESPONSE: Mr. Eubank asserts the attorney-client privilege and work product protection to the extent this request seeks any notes he may have created in meeting with counsel and/or in preparation for this deposition.

Subject to and without waiving the foregoing, none.

9. All documents or other materials provided to you by counsel for Defendants in connection with this case.

RESPONSE: Mr. Eubank asserts the attorney-client privilege and work product protection to the extent this request seeks the identity of documents or communications exchanged with counsel as may relate to the heat litigation cases.

Subject to and without waiving the foregoing, Mr. Eubank was provided with a copy of Plaintiff's Notice to Take Gary Eubank's Deposition and Exhibit A attached thereto.

10. Any documents you ever reviewed regarding decisions not to air condition any Texas Department of Criminal Justice prison facility.

RESPONSE: None.

11. All notes you have prepared or documents you have created in connection with this case.

RESPONSE: *See* Response to Request No. 8.

Respectfully submitted,

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/s/J. Lee Haney

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BRANCH**

**NOTICE OF ELECTRONIC FILING**

I, J. Lee Haney, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing, a correct copy of the foregoing in accordance with the Electronic Case Files System of the Southern District of Texas, on May 4, 2016.

/s/J. Lee Haney  
**J. LEE HANEY**  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, J. Lee Haney, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing has been served on all counsel of record via electronic mail on May 4, 2016, as authorized by Fed. R. Civ. P. 5(b)(2) and in accordance with the electronic case filing procedures of the United States District Court for the Southern District of Texas.

/s/J. Lee Haney  
**J. LEE HANEY**  
Assistant Attorney General